

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEAN R. SOULLIERE AND  
COLLEEN A. SOULLIERE, AND  
SOULLIERE AND JACKSON, INC., d/b/a  
ONE HOUR MARTINIZING,

Defendants.

Civil Action No. \_\_\_\_\_

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency, files this Complaint and alleges as follows:

INTRODUCTION

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a). The United States seeks to recover response costs incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances at or from the 10th Street Superfund Site (the "Site"), located in Columbus, Platte County, Nebraska.

## JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

## DEFENDANTS

4. Defendant Dean R. Soulliere ("Dean Soulliere") is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant Colleen A. Soulliere ("Colleen Soulliere") is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant Soulliere and Jackson, Inc. ("Soulliere and Jackson, Inc.") is incorporated in the State of Nebraska and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

## THE SITE

7. The 10th Street Superfund Site is located in the south-central portion of the City of Columbus in Platte County, Nebraska. Since about 1984, hazardous substances including trichloroethylene (TCE) and tetrachloroethylene (also called perchloroethylene or PCE) have been detected in the groundwater and municipal drinking water wells at the Site. Since about 1988, hazardous substances including TCE and PCE have been detected in the soils at the Site.

8. The 10th Street Site was placed on the National Priorities List on August 30, 1990. See 55 Fed. Reg. 35502, 35512 (Aug. 30, 1990); 40 C.F.R. Part 300, Appendix B. The

National Priorities List is a national list of hazardous waste sites posing the greatest threat to health, welfare and the environment. The National Priorities List has been established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

9. EPA has divided the Site into two Operable Units known as Operable Unit 1 ("OU1") and Operable Unit 2 ("OU2"). OU1 consists of soil and groundwater contamination located south and downgradient of the property on which Defendants own a dry cleaning establishment. OU2 consists of soil and groundwater contamination at the Defendants' property and south of that property.

10. From 1990 to 1992, EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") at OU1 of the Site. The RI/FS indicated that the soil and groundwater at the Site are contaminated with TCE and PCE. This contamination was also detected in municipal wells located in OU1 at the Site.

11. In February of 1995, EPA issued a Record of Decision (ROD) which called for groundwater monitoring and institutional controls as the selected remedy with a contingency for extraction and discharge to the Loup River if the groundwater monitoring results indicated unacceptable risks.

12. As required by the ROD, EPA performed monitoring and collected samples. This further investigation revealed that a previously unidentified source of TCE and PCE contamination was located to the north (upgradient) of the original study area and had been migrating into the previous study area.

13. Consequently, EPA divided the Site into two separate work units, designating the original study area as Operable Unit 1 (OU 1) and newly discovered contamination as Operable Unit 2 (OU 2) of the Site.

14. EPA conducted an RI/FS for OU2 of the Site and on September 30, 1999, approved a Removal Action for OU2 on September 30, 1999 in the form of an air sparging/soil vapor extraction (AS/SVE) system to address soil and groundwater contamination. In February 2001, EPA prepared a second Remedial Investigation which incorporated the data gathered from removal assessments and 1999-2000 quarterly groundwater monitoring results. EPA issued an Interim Action ROD on September 20, 2001 pursuant to which EPA installed and began operation of a groundwater extraction and treatment system. In September of 2005 EPA issued the final OU2 ROD which called for continued operation of the vapor extraction system and groundwater extraction and treatment and institutional controls in all of the source areas, and in situ chemical oxidation in the upgradient portion of the groundwater contaminant plume.

15. EPA has incurred costs and will continue to incur costs in conducting the response actions described in the preceding paragraphs.

#### LAW GOVERNING CLAIMS FOR RELIEF UNDER SECTION 107 OF CERCLA

16. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of such hazardous substance.

17. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA pursuant to Section 2(e) of Executive Order No. 12,580, 52 Fed. Reg. 2,923 (Jan. 23, 1987), as amended by Exec. Order No. 12,777, 56 Fed. Reg. 54,757 (Oct. 18, 1991) and Exec. Order No. 13,016, 61 Fed. Reg. 45,871 (Aug. 28, 1996), reprinted in 42 U.S.C.A. § 9615 at 340-46 (West 1995).

18. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

“Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

\* \* \*

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan . . . .”

19. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides:

“In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

FACTS RELEVANT TO LIABILITY OF  
DEFENDANTS UNDER SECTION 107 OF CERCLA

20. From 1982 to the present Defendants Dean Soulliere and Colleen Soulliere have owned real property located at 2262 25<sup>th</sup> Avenue in Columbus in OU2 of the Site.

21. From 1970 until September 1, 2006, Defendants Dean Soulliere and Soulliere and Jackson, Inc., operated a dry cleaning business known as One Hour Martinizing (“OHM”) at the property described in the preceding paragraph.

22. The OHM dry cleaning business used chemicals containing PCE in the dry cleaning process it conducted. TCE is created in the breakdown of PCE. PCE and TCE are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

23. Disposals and releases of chemicals containing PCE occurred at and/or from the OHM business and property.

24. Soil and groundwater sampling conducted by EPA at and around the OHM dry cleaning business and property has identified said business and property as a source of PCE and TCE contamination of the soil, groundwater and the municipal water supply wells at the Site.

#### GENERAL ALLEGATIONS

25. The 10th Street Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The real property and OHM business premises located at 2262 25<sup>th</sup> Avenue in Columbus, which is owned and was operated by Dean and Colleen Soulliere, is also a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) (“OHM facility”).

26. There are and were, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), releases and threatened releases of hazardous substances into the environment at and from the OHM facility.

27. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been treated, stored, or disposed of at the OHM facility. Such hazardous substances have been found at the Site.

28. As a result of the releases or threatened releases at or from the Site, the United States has incurred “response” costs as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the releases or threatened

releases at or from OU1 and OU2 of the Site. The United States will continue to incur response costs in connection with OU2 of the Site.

29. The response costs incurred by the United States in connection with the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF:  
LIABILITY CLAIM AGAINST DEAN SOULLIERE  
UNDER SECTION 107(a)(1) and (2) OF CERCLA

30. Paragraphs 1 through 29 are re-alleged and incorporated herein by reference.

31. Defendant Dean Soulliere is current owner of a facility at the Site from which a release of hazardous substances has occurred.

32. Defendant Dean Soulliere was the owner of a facility at the Site at the time of disposal of hazardous substances.

33. Defendant Dean Soulliere was the operator of a facility the Site at the time of the disposal of hazardous substances.

34. Defendant Dean Soulliere is therefore jointly and severally liable, under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), for all costs incurred by the United States in response to releases of hazardous substances at the Site.

35. Defendant Dean Soulliere has not fully reimbursed the United States for the costs incurred in responding to the releases of hazardous substances at the Site.

SECOND CLAIM FOR RELIEF:  
LIABILITY CLAIM AGAINST COLLEEN SOULLIERE  
UNDER SECTION 107(a)(1) and (2) OF CERCLA

36. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

37. Defendant Colleen Soulliere is current owner of a facility at the Site from which a release of hazardous substances has occurred.

38. Defendant Colleen Soulliere was the owner of a facility at the Site at the time of disposal of hazardous substances.

39. Defendant Colleen Soulliere is therefore jointly and severally liable, under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), for all costs incurred by the United States in response to releases of hazardous substances at the Site.

40. Defendant Colleen Soulliere has not fully reimbursed the United States for the costs incurred in responding to the releases of hazardous substances at the Site.

THIRD CLAIM FOR RELIEF:  
LIABILITY AGAINST SOULLIERE AND JACKSON, INC.  
UNDER SECTION 107(a) (1) and (2) of CERCLA

41. Paragraphs 1 through 40 are re-alleged and incorporated herein by reference.

42. Soulliere and Jackson, Inc. operated the OHM dry cleaning business from 1970 to September 1, 2006.

43. Disposals of hazardous substances occurred at or from the OHM dry cleaning business during the time the OHM dry cleaning business was operated by Soulliere and Jackson, Inc.

44. Defendant Soulliere and Jackson, Inc. is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), for all costs incurred by the United States in response to releases of hazardous substances at the Site.

45. Defendant Soulliere and Jackson, Inc. has not fully reimbursed the United States for the costs incurred in responding to the release of hazardous substances at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:



1. Enter judgment against Defendants, jointly and severally, for all costs incurred by the United States in response to releases or threatened releases of hazardous substances at the Site;
2. Award the United States prejudgment interest on its response costs;
3. Enter a declaratory judgment against Defendants pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), jointly and severally, for all future response costs to be incurred by the United States in connection with the Site; and
4. Grant such other relief as the Court deems appropriate.

REQUEST FOR PLACE OF TRIAL

The United States of America hereby requests that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Respectfully submitted,

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